IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 19675 of 2003

Between:

B. Bujji, W/o. Hanuman Naik, Aged about 35 years,
R/o. 2-115/1, Amangal Village and Mandal, Mahaboob Nagar District.

..... PETITIONER

AND

1. The District Collector, Mahaboob Nagar District, Mahaboob Nagar.
2. The Andhra Pradesh Khadi and Village Industries Board, Rep. by its

Chief Executive Officer,
Hyderabad.

3 The A.P. Khadi and Village Industries Board, District Office, Rep. by

its Functional manager, Mahaboob Nagar District.

.... RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or direction or Writ more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in issuing auction notice dated 12.8.2003 which is to be conducted on 30.09.2003 is wholly illegal, arbitrary and unjust and consequently set aside the auction notice dated 12.8.2003 issued by the 3rd respondent.

Counsel for the Petitioner: MR.G.RAVI MOHAN

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

The Court made the following :

ORDER

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Heard.

At the request of both the learned counsel, the writ petition itself is taken up for disposal.

This writ petition is filed seeking a *Writ of Mandamus* declaring the action of the respondents in issuing auction notice, dated 12.08.2003, which is to be conducted on 30.09.2003, as illegal and arbitrary, and consequently to set aside the auction notice dated 12.08.2003.

The case of the petitioner, in brief, is that she is the owner of the premises bearing No.2-115/1, situated at Amangal village in Mahaboobnagar district, and she is also the owner of other couple of houses. It is her further case that having obtained a loan of Rs.86,000/- for establishing a unit at Amangal, she has mortgaged the house property, bearing No.1-25, Sitaram Thanda Village, Amangal, but did not mortgage the other property, bearing No.2-115/1, of Amangal Village, which has been gifted to her daughter. The grievance of the petitioner is that the respondents without proceeding against the property, which was mortgaged, are proceeding against the other property, which was gifted to her daughter.

In the counter affidavit filed by the 3rd respondent, it is stated that there is no dispute with regard to the loan obtained by the petitioner. It is further submitted that the

petitioner at the time of taking loan, apart from executing other formalities, in fact, had also executed a security bond, in respect of the property belonging to B.Humala Naik, vide Security Bond bearing No.1135/97, dated 03.05.1997, for Ac.7.15 guntas of land in Sy.No.396 situated at Akuthotapally Shivaru, Amangal. When the petitioner committed default and failed to pay the loan amount, notice was issued attaching Sri Banavath Humlanaik's landed property, which was registered as security in favour of the 2nd respondent. On coming to know from the Mandal Revenue Officer, Amangal, about the non-availability of the landed property, 3rd respondent had wrote a letter, dated 10.06.2003, to the Executive Officer, Gram Sachivalayam, Amangal, to inform about the house property, if any, available in the name of the petitioner herein. Pursuant to receiving the information that the petitioner has a house bearing H.No.2-115/1 in her name, notice attaching the house property of the petitioner was issued. Therefore, it cannot be said that the respondents are proceeding illegally.

Having regard to the submissions made on either side and on perusal of the material available on record, it is seen that the petitioner's main grievance is against the action of the respondents in trying to proceed against the house property bearing No.2-115/1, which was gifted to her daughter. From the counter affidavit it is evident that as a security for the loan, which has been taken by the petitioner, a security bond bearing No.1135/97 dated 03.05.97 was executed by B.Humala Naik. However on coming to know about the non-availability of the same, the respondents have taken steps to recover the loan amount from other sources. Absolutely there was no explanation in the affidavit filed by the petitioner with regard to such execution of the surety bond. It is always open for a creditor to proceed against the property at his choice, more so where the property has been given as security.

Under these circumstances, I am of the opinion that the petitioner has not approached this Court with clean hands and suppressed the facts with regard to execution of the surety bond. Further, the plea that the respondents ought to have proceeded against the property, which has been mortgaged, is wholly unsustainable. I do not find any merits in the writ petition. The petitioner is not entitled to any indulgence from this Court.

The writ petition is accordingly dismissed.

23.08.2004

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To

1. The District Collector, Mahaboob Nagar District, Mahaboob Nagar.
2. The Chief Executive Officer,
The Andhra Pradesh Khadi and Village Industries Board,

Hyderabad.
3. The Functional Manager, The A.P. Khadi and Village Industries

Board, District Office, Mahaboob Nagar District.

4. Two CCs to GP For Industries & Commerce, High Court Buildings,

High Court of A.P. Hyderabad (O.U.T)

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